



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 210430-0093]

RIN 0648-BK52

### Fisheries Off West Coast States; Emergency Action to Temporarily Remove 2021 Seasonal Processing Limitations for Pacific Whiting Motherships and Catcher-Processors

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; emergency action; request for comments.

**SUMMARY:** This emergency rule temporarily allows at-sea Pacific whiting processing vessels to operate as both a mothership and a catcher-processor during the 2021 Pacific whiting fishery. This action is necessary to ensure catcher vessels in the at-sea whiting sector are able to fully harvest sector allocations. Emergency measures under this rule will allow catcher-processors to operate as motherships and replace mothership processing vessels that are unable to operate in the at-sea whiting sector during the ongoing COVID-19 pandemic and resulting high economic uncertainty in 2021.

**DATES:** *Effective date:* Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until November 10, 2021.

*Comment date:* Comments must be submitted by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2021-0035 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov) and enter NOAA-NMFS-2021-0035 in the Search box, click the “Comment” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Barry Thom, c/o Colin Sayre, Sustainable Fisheries Division, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

### **Electronic Access**

This emergency rule is accessible via the Internet at the Office of the Federal Register Web site at <https://ecfr.federalregister.gov/>. Background information and analytical documents are available at the NMFS West Coast Region Web site at: <http://www.fisheries.noaa.gov/species/west-coast-groundfish.html> and at the Pacific Fishery Management Council's website at <http://www.pcouncil.org/groundfish/fishery-management-plan/groundfish-amendments-in-development/>.

**FOR FURTHER INFORMATION CONTACT:** Colin Sayre, phone: 206-526-4656, or e-mail: [colin.sayre@noaa.gov](mailto:colin.sayre@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Pacific Coast Groundfish Fishery Management Plan (FMP) prohibits processing vessels in the at-sea Pacific whiting

fishery from operating as both a mothership (MS) and catcher processor (C/P) during the same calendar year. C/P vessels are capable of both harvesting and processing catch at-sea, while MS vessels solely process catch delivered by other vessels (referred to as catcher vessels). By design, some MS vessels are built solely to process catch delivered by other vessels while at-sea, whereas C/P vessels are capable of harvesting catch, and receiving deliveries from catcher vessels. Because of this, some processing vessels are able to switch between the C/P and MS sectors, while other vessels are not. To help ensure market stability in the separate sectors, current regulations do not allow processing vessels to switch between the MS and C/P sectors in a single calendar year. Under existing restrictions, a decision to operate a processing vessel as a C/P in response to the ongoing pandemic would preclude the vessels from operating as an MS for the remainder of the 2021 fishing year, and vice versa. Catcher vessels in the at-sea whiting sector rely on MS vessels to accept delivery of their catch and, as a result, the amount of whiting these vessels can harvest is limited by the availability of at-sea processing vessels in the MS sector. Losing an MS processing vessel would prevent catcher vessels from harvesting their 2021 Pacific whiting allocations. The remaining processing vessels participating in the MS sector would not possess the capacity to receive deliveries from all catcher vessels for the 2021 Pacific whiting season.

During the March 2021, Pacific Fishery Management Council (Council) meeting, industry members from the MS cooperative submitted a letter to the Council requesting action to address this issue. In their letter, industry members estimated that the loss of one MS processing vessel would leave approximately 24 percent of the MS sector allocation unharvested. The Council Groundfish Advisory Panel (GAP) supported the industry statement, and estimated economic impacts that would result from lost at-sea processing capacity. The Council's Groundfish Management Team (GMT) provided additional analysis showing that compared to 2016-2019 fishing years, the proportion of whiting

harvested in 2020 decreased by 13 percent in the MS sector and 2 percent in the C/P sector. The GMT stated these decreases likely reflect COVID-19 impacts, including a lack of processing vessels available to catcher vessels due to attempts to minimize the spread COVID-19.

In 2020, NMFS issued an emergency rule (85 FR 37027, June 19, 2020) to allow vessels to operate as an MS and a C/P in the same year in response to industry requests and Council recommendation. During the 2020 whiting season, several at-sea processing vessels experienced COVID-19 outbreaks, forcing them to halt operations to prevent spreading infection to additional vessels and shorebased facilities. COVID-19 outbreaks and resulting shutdowns increased operational costs and caused foregone opportunities in the at-sea whiting fishery. In 2020, five MS permits were used to process MS allocations. The 2020 emergency action (85 FR 37027, June 19, 2020) provided temporary operational flexibility for the at-sea sector for 180 days. However, it was unforeseen when the Council made its recommendation in 2020 how long the COVID-19 pandemic would last, how COVID-19 disease variants would emerge, and when vaccination efforts would be complete.

On March 9, 2021, the Council voted to request that NMFS initiate an emergency action to temporarily allow any eligible MS and C/P to operate as both types of processing vessel during the 2021 Pacific whiting season. This action would not be an extension of the 2020 emergency rule (85 FR 37027, June 19, 2020). Vessels would not be required to declare which sector they will operate in for the year at the beginning of the season. This emergency action would allow at-sea Pacific whiting processing vessels to switch operations for 180 days after publication. Additionally, these temporary measures can be extended for 186 days if the COVID-19 health emergency persists. There is continued risk to at-sea whiting vessels and loss of processing capacity should a COVID-19 outbreak occur onboard a processing vessel. Because of this risk and

uncertainty, members of industry and the Council GAP and GMT advisory bodies recommended the Council take emergency action to allow available vessels to operate as both types of processing vessels for the 2021 fishing year to avoid potential economic hardship. In the event of a COVID-19 outbreak onboard a processing vessel, flexibility provided by removing seasonal processing restrictions under these emergency measures could allow other vessels to process MS sector whiting allocations that at-sea whiting catcher vessels would not otherwise be able to deliver. Therefore, the Council has recommended that NMFS initiate emergency action in 2021 to provide operational flexibility to the at-sea sectors by temporarily allow processing vessels to operate as both an MS and a C/P in the same calendar year.

### **Justification for Emergency Action**

Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of Commerce to implement emergency regulations to address fishery emergencies. NMFS policy guidelines for the use of emergency rules define criteria for determining whether an emergency exists under section 305(c) of the Magnuson-Stevens Act (62 FR 44451; August 21, 1997). Under NMFS' Policy Guidelines for the Use of Emergency Rules, the phrase "an emergency exists involving any fishery" is defined as a situation that meets the following three criteria:

1. Results from recent, unforeseen events or recently discovered circumstances;
2. Presents serious conservation or management problems in the fishery; and
3. Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rule making process.

In addition, the Magnuson-Stevens Act section 305(c)(3) can allow for an extension of an emergency rule for an additional 186 days if the public has had the opportunity to comment and, in the case of a Council recommendation for emergency regulations or interim measures, the council is actively preparing a fishery management plan, plan amendment, or proposed regulations to address the emergency or overfishing on a permanent basis.

### *Rationale and Effects*

At the March 2021 meeting, the Council addressed requests from whiting fishery stakeholders after considering a range of factors. These factors include, but are not limited to:

- At the time of the emergency rule request in 2020, the state of knowledge of the coronavirus and potential impacts of the COVID-19 pandemic was limited.
- It was unforeseen that whiting fishery participants would still be dealing with the reduced fishing capacity and operational shutdowns due to COVID-19 one year later.
- It was unforeseen that the fishing industry would not be vaccinated for COVID-19 by the start of the 2021 fishing season. Ready access to vaccinations is unknown throughout the duration of the whiting season.
- The increase and spread of COVID-19 variants is recent and unforeseen.
- It was unforeseen how the development and implementation of local, State and national health directives would impact the fishing industry in response to a vessel outbreak in the fishing industry.

Under these emergency measures, temporarily lifting the restriction on MS and C/P operations would increase the likelihood that MS catcher vessels have markets to which to deliver catch throughout the 2021 fishing season. The operational flexibility provided in this emergency action would prevent significant direct economic loss to at-

sea whiting fishery participants and fishing communities. These measures will allow catcher vessels to harvest MS sector allocations and provide catch revenue to the respective vessel crews. In the event that additional processing vessels cannot commit to taking deliveries from catcher vessels for the remainder of the 2021 Pacific whiting season (due to changes in business plans or because a processing vessel is rendered inoperable due to COVID-19 outbreaks, for example) this emergency rule may provide additional harvesting and processing opportunities for at-sea Pacific whiting fishery participants. This action would help promote health and human safety by allowing processing vessels to quarantine while minimizing economic harm to at-sea whiting catcher vessels. This action would provide operational flexibility for up to six MS permits that would allow processing vessel owners and operators to plan and make decisions that do not require a tradeoff in health and human safety for economic opportunity.

In light of best available information, the status of the whiting resource, and the potential social and economic costs of maintaining the existing permit transfer restrictions, NMFS finds that an emergency exists, and regulations are necessary to address the emergency.

### **Emergency Measures**

This emergency action removes restrictions prohibiting an at-sea Pacific whiting processing vessel from operating as a MS or C/P in the same calendar year, effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This action temporarily (for 180 days) allows a processing vessel to operate as both an MS and C/P in the same calendar year, but not on the same trip. This action does not modify or change any other aspects of the at-sea Pacific whiting fishery. Owners of processing vessels that intend to operate as both an MS and a C/P during the 2021 Pacific whiting season must follow this procedure:

1) *Submit a request to register for both processing permits.* The vessel may be registered under both an MS permit and a C/P endorsed permit simultaneously for the duration of the emergency rule. The owner of a processing vessel currently registered under a C/P endorsed permit may also operate as an MS by submitting a request to NMFS Permits to register the processing vessel under a valid MS permit per regulations in 50 CFR 660.25(b). The owner of a processing vessel currently registered under an MS permit may also operate as a C/P by submitting a request to NMFS Permits to register the processing vessel under a valid C/P endorsed permit per regulations in 50 CFR 660.25(b).

2) *Submit a notification of a material change to coop agreement within 7 days.* To operate in the MS fishery (*i.e.*, receive deliveries of catch from MS catcher vessel and process MS sector allocations at-sea) the vessel must be included in the MS coop agreement. To operate in the C/P fishery (*i.e.*, catch and process C/P sector allocations at-sea) the vessel must be included in the C/P coop agreement. Including a new vessel in either the MS or C/P coop agreement constitutes a material change to the coop agreement. Within 7 calendar days of the new processing vessel operating for the first time in either the 2021 MS coop fishery or the 2021 C/P coop fishery, the respective coop manager must notify NMFS in writing of such change to the coop agreement as required in regulations at 50 CFR 660.150(d)(1)(iii)(B)(4) and 50 CFR 660.160(d)(1)(iii)(B)(4) .

3) *Submit a revised coop agreement within 30 days of material change to the coop agreement.* Within 30 days of a new vessel participating in a coop fishery, the MS or C/P coop manager must submit a revised coop agreement to NMFS that lists all vessels and/or processing vessels operating in the respective coop and includes the new processing vessel, along with a letter describing the change to the coop agreement, as required in regulations at 50 CFR 660.150(d)(1)(iii)(B)(4) and 50 CFR 660.160(d)(1)(iii)(B)(4).

4) *Change vessel declaration before each fishing trip.* For each trip, the vessel must update its vessel monitoring system (VMS) declaration to reflect its activity for that



trip prior to departure as specified in existing groundfish regulations at 50 CFR 660.13(d)(4)(iv)(A). The declaration is binding for the duration of the trip and may not be changed until completion of the trip. A processing vessel must submit one of the following declarations: a) Limited entry midwater trawl, Pacific whiting catcher/processor sector; or b) Limited entry midwater trawl, Pacific whiting mothership sector (mothership).

5) *Economic Data Collection (EDC) Program*. A separate EDC form is required for the owner, lessee, charterer of a mothership vessel registered to an MS permit as well as owner, lessee, charterer of a catcher processor vessel registered to a C/P-endorsed limited entry permit. If a vessel holds both types of permit in one calendar year, two EDC forms must be submitted as specified at 50 CFR 660.114.

6) *Expiration of Emergency Measures*. Vessels that have operated as both an MS and C/P in 2021 would be required to cease operations for the remainder of the year following expiration of these emergency measures, unless otherwise extended. NMFS will notify any such vessels, prior to expiration, to limit the potential impact of expiration of these measures.

### **Renewal of Emergency Regulations**

The Magnuson-Stevens Act limits NMFS's emergency action authority to an initial period of 180 days, with a potential extension up to an additional 186 days, if warranted. The public has an opportunity to comment on the initial emergency action (see **ADDRESSES**). After considering public comments on this emergency rule, NMFS may take action to extend the emergency measures before expiration.

### **Classification**

The NMFS Assistant Administrator has determined that this emergency rule is consistent with the Pacific Coast Groundfish FMP, section 305(c) and other provisions of the Magnuson-Stevens Act, the Administrative Procedure Act (APA), and other

applicable law. Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries finds prior notice and public comment is not required because it would be impracticable and contrary to the public interest. This emergency action was recommended by the Council following a letter and comments from members of the public representing the at-sea whiting industry during the March 2021 Council meeting. Providing prior notice through proposed rulemaking and public comment period in the normal rulemaking process would be counter to public interest by delaying implementation of emergency measures intended to provide relief for a time sensitive management problem. Implementing this action as soon as possible maximizes the time available for the at-sea industry to adjust business plans for the year. For the reasons outlined above, NMFS finds it impracticable and contrary to the public interest to provide prior notice and public comment on these emergency measures.

Additionally, this rule is exempt from the 30-day delayed effectiveness provision of the APA under 5 U.S.C. 553(d)(1) because it alleviates a restriction that would place MS-dependent catcher vessels at an economic disadvantage in the 2021 Pacific whiting fishery. Immediate implementation of this rule is necessary to allow the at-sea sectors sufficient time to plan operations and maximize flexibility provided by this action. Maintaining the prohibition on vessels operating as both an MS and C/P in the same calendar year would present immediate serious economic impacts without contributing to the economic goals of the Catch Share Program, at-sea MS cooperative or C/P cooperative.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

The Regulatory Flexibility Act does not apply to this emergency rule because prior notice and opportunity for public comment is not required.

*Recordkeeping and Reporting Requirements*

This emergency action includes record keeping and reporting requirements previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0573: Expanded Vessel Monitoring System (VMS) Requirements for the Pacific Groundfish Fishery. Prior to leaving port, an at-sea Pacific whiting processing vessel must declare whether it will be operating in the MS sector or the C/P sector for each trip. Vessels in fisheries off West Coast states must declare through VMS the gear type and sector in which they will participate, including the limited entry midwater trawl and Pacific whiting MS and C/P sectors, as specified in existing groundfish regulations at 50 CFR 660.13(d)(4)(iv)(A). The number of declaration reports the vessel operator is required to submit to NMFS would not change under this action. In addition, this action does not change existing recordkeeping and reporting requirements. Therefore, no entity would be subject new reporting requirements under this emergency action.

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, and Indian Fisheries.

Dated: May 3, 2021.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs,*

*National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

**PART 660—FISHERIES OFF WEST COAST STATES**

1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C 7001 *et seq.*

2. In § 660.25, add paragraph (b)(4)(vii)(D) to read as follows:

**§ 660.25 Permits.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(vii) \* \* \*

(D) *Emergency rule creating season flexibility on at-sea processing restrictions.*

Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until November 10, 2021, notwithstanding any other section of these regulations, vessels may be registered to both a limited entry MS permit and limited entry trawl permit with a C/P endorsement during the same calendar year. Vessels registered to both an MS permit and a C/P endorsed permit may operate in both the at-sea MS sector and C/P sector during the same calendar year, but not on the same trip. Prior to leaving port, a vessel registered under both an MS permit and a C/P endorsed permit must declare through VMS the sector in which it will participate for the duration of the trip, as specified at § 660.13(d)(4)(iv)(A).

\* \* \* \* \*

3. In § 660.112, add paragraphs (d)(3)(i) through (ii) and (e)(3)(i) through (ii) to read as follows:

**§ 660.112 Trawl fishery—prohibitions.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(i) Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until November 10, 2021, notwithstanding any other section of these

regulations, a vessel that was used to fish in the C/P fishery may be used to receive and process catch as mothership in the same calendar year, but not on the same fishing trip.

(ii) [Reserved]

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(i) Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until November 10, 2021, notwithstanding any other section of these regulations, catcher-processor vessels and motherships are exempt from this prohibition.

(ii) [Reserved]

\* \* \* \* \*

4. In § 660.150, add paragraphs (b)(1)(i)(D), (b)(2)(ii)(B)(I) through (2), (f)(1)(iii), and (f)(2)(i)(A) through (B) to read as follows:

**§660.150 Mothership (MS) Coop Program.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) \* \* \*

(D) Under emergency measures effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until November 10, 2021, notwithstanding any other section of these regulations, a vessel may operate as both an MS and a C/P during the 2021 Pacific whiting primary season, but not on the same fishing trip.

\* \* \* \* \*

(2) \* \* \*

(ii) \* \* \*

(B) \* \* \*

(1) Under emergency measures effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until November 10, 2021, notwithstanding any other section of these regulations, a vessel may operate as both an MS and C/P during the 2021 Pacific whiting primary season, but not on the same fishing trip. A vessel registered in the same calendar year to operate under both a limited entry MS permit and limited entry permit with a C/P endorsement must declare prior to leaving port the sector in which it will participate for the duration of the trip, as per declaration requirements specified at § 660.13(d)(4)(iv)(A).

(2) [Reserved]

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(iii) *Emergency rule creating seasonal flexibility on at-sea processor restrictions.*

Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until November 10, 2021, notwithstanding any other section of these regulations, vessels may operate as both an MS and a C/P during the 2021 Pacific whiting primary season, but not on the same fishing trip.

\* \* \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) *Emergency rule creating seasonal flexibility on at-sea processing restrictions.*

Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until November 10, 2021, a vessel registered to an MS permit is exempt from this declaration and may also operate as a C/P during the 2021 Pacific whiting primary season, even if the permit owner previously declared to operate solely as a mothership.

(B) [Reserved]

\* \* \* \* \*

5. In § 660.160, add paragraphs (b)(1)(i)(D), (b)(1)(ii)(A)(*I*) through (2), (e)(1)(iii)(A) through (B), and (e)(2)(i)(A) through (B) to read as follows:

**§ 660.160 Catcher/processor (C/P) Coop Program.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) \* \* \*

(D) Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until November 10, 2021, notwithstanding any other section of these regulations, a vessel may operate as both an MS and a C/P during the 2021 Pacific whiting primary fishing season, but not on the same fishing trip.

\* \* \* \* \*

(ii) \* \* \*

(A) \* \* \*

(*I*) Under emergency measures effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until November 10, 2021, a vessel may operate as both a mothership and C/P during the 2021 Pacific whiting primary season, but not on the same fishing trip. A vessel registered in the same calendar year to operate under both a limited entry MS permit and limited entry permit with a C/P endorsement must declare prior to leaving port the sector in which it will participate for the duration of the trip, as per declaration requirements specified at § 660.13(d)(4)(iv)(A).

(2) [Reserved]

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(A) Emergency rule creating seasonal flexibility on at-sea processor restrictions.

Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until November 10, 2021, notwithstanding any other section of these regulations, vessels may operate as both an MS and a C/P during the 2021 Pacific whiting primary season, but not on the same fishing trip.

(B) [Reserved]

\* \* \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) Emergency rule creating seasonal flexibility on at-sea processing restrictions.

Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until November 10, 2021, a vessel registered to a C/P endorsed permit is exempt from this declaration and may also operate as an MS during the 2021 Pacific whiting primary season, even if the permit owner previously declared to operate solely as a C/P.

(B) [Reserved]

\* \* \* \* \*